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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

JAMES DEVLIN,
An individual,
Plaintiff,

vs.

ELECTRICAL WORKERS' JOINT
BOARDS OF TRUSTEES,
Defendant.

Case: 2:06-cv-12232
Assigned To: Cook, Julian Abele
Referral Judge: Pepe, Steven D
Filed: 05-16-2006 At 09:58 AM
CMP JAMES DEVLIN V. ELEC WORKERS JO
INT BD OF TRUSTEES (TAM)

/_____
JAN JEFFREY RUBINSTEIN (P57937)
Law Office of Jan Jeffrey Rubinstein
Attorney for Plaintiff
30800 Telegraph Rd. Ste. 1775
Bingham Farms, MI 48025
(248) 980-3641
/_____

COMPLAINT

The Plaintiff JAMES DEVLIN by and through his attorney, Law Office of Jan Jeffrey Rubinstein, for its complaint against the ELECTRICAL WORKERS' JOINT BOARDS OF TRUSTEES ("Company") states as follows:

Nature of Action and Jurisdiction

1. This is a civil complaint brought under ERISA §502, 29 USC 1132, and federal common law, regarding breach of the terms of an employee benefit plan and breach of fiduciary duty, for the purpose of compelling Defendants to provide certain disability insurance benefits in the amounts and at the coverage levels promised and for an accounting, recovery of damages, costs, and attorney fees incurred as a consequence of Defendants' failure to do so.

2. This Court has jurisdiction pursuant to ERISA §§502(e)(1), (f), 29 USC 1132(e)(1), (f), and 28 USC 2201.

3. Venue properly lies in this District pursuant to ERISA §502(e)(2), 29 USC 1132(e)(2).

Parties and General Allegations

4. Plaintiff JAMES DEVLIN is a participant, within the meaning of ERISA §3(7), 29 USC 1002(7), in a welfare benefit plan called "Electrical Workers' Pension Trust Fund" ("Plan") by virtue of his former employment with International Brotherhood of Electrical Workers, Local Union No. 58. Plaintiff resides in the City of Westland, Michigan.

5. Defendant Plan is a welfare benefit plan within the meaning of ERISA §3(1), 29 USC 1002(1). The Plan was issued by defendant ELECTRICAL WORKERS' JOINT BOARDS OF TRUSTEES to International Brotherhood of Electrical Workers, Local Union No. 58, as policyholder.

6. Defendant ELECTRICAL WORKERS' JOINT BOARDS OF TRUSTEES is a Michigan company that is and was at all material times doing business in this district. Company is a fiduciary and administrator, within the meaning of ERISA §§3(16), 402(a)(2), 29 USC 1002(16), 1102(a)(2), with respect to the Plan.

7. On or about January 3, 1996, Plaintiff became entitled to payment of total and permanent disability monthly benefits under the Plan.

8. On or about June 30, 2003, Plaintiff received a letter from Company stating that his monthly disability benefits under the Plan had been overpaid and giving notice that disability benefit payments would be discontinued.

9. Defendant has reinstated Plaintiff's disability benefits as of March, 2006, however has failed to pay the past due amounts despite several requests.

10. Pursuant to the Plan, Defendant was receiving health care insurance coverage for himself and his family for a discounted rate of approximately \$70.00 per month.

11. Since the discontinuation of his benefits, Defendant's health care coverage has been reduced and he now pays approximately \$927.00 per month.

Count I

Action Under ERISA §502(a)(1)(B), 29 USC 1132(a)(1)(B), to Recover Full Benefits

12. Plaintiff incorporates by reference paragraphs 1 through 11.

13. The discontinuation of Plaintiff's disability benefit payments and the determination that Plaintiff's disability benefits were overpaid are in direct violation of the terms of the Plan.

Count II

**Action Under ERISA §502(a)(3), 29 USC 1132(a)(3),
to Remedy Breach of Fiduciary Duty**

14. Plaintiff incorporates by reference paragraphs 1 through 13.

15. Pursuant to ERISA §404(a), 29 USC 1104(a), as fiduciary with respect to the Plan, Company has and had a duty to discharge its duties with respect to the Plan solely in the interest of the Plan participants and their beneficiaries, and

- a. for the exclusive purpose of providing benefits to Plan participants and their beneficiaries and defraying reasonable expenses of administering the Plan; and
- b. with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims; and
- c. in accordance with the Plan documents and instruments insofar as such documents and instruments are consistent with the provisions of Titles I and IV of ERISA.

16. Company's actions in discontinuing Plaintiff's benefits and in refusing to reinstate Plaintiff's benefits and provide an accurate accounting of his benefits were in violation of each and every one of its fiduciary duties as set forth above.

Prayer for Relief

PLAINTIFF REQUESTS that the Court grant the following relief:

- a. a declaratory judgment pursuant to ERISA §502(a)(1)(B), 29 USC 1132(a)(1)(B), and 28 USC 2201, declaring that Plaintiff is entitled to continuation of the group disability benefits in the proper amounts as set forth in the Plan in effect at the time benefits became payable and that Company has violated the Plan and its fiduciary duties by discontinuing these benefits;
- b. preliminary and permanent injunctions pursuant to ERISA §502(a)(3), 29 USC 1132(a)(3), and Fed. R. Civ. P. 65, enjoining Defendant from discontinuing, reducing, limiting, or terminating the disability benefits payable to Plaintiff under the Plan;
- c. a full and accurate accounting by Defendant of all computations for Plaintiff's disability benefits, in sufficient detail so that Plaintiff may ascertain that his benefits are being paid in the proper amount;
- d. an order compelling Defendant to pay Plaintiff forthwith the full amount of disability benefits due him and to continue such payments for the period set forth in the Plan, including interest on all unpaid benefits;
- e. disgorgement of any profits or gain Defendants have obtained as a result of the wrongful action alleged in this complaint and equitable distribution of any profits or gain to Plaintiff;
- f. reasonable attorney fees and costs, pursuant to ERISA §502(g)(1), 29 USC 1132(g)(1);
- g. such other relief as may be just and appropriate.

Respectfully submitted,

Law Office of Jan Jeffrey Rubinstein

By /s/ 

Jan Jeffrey Rubinstein (P57937)

Attorney for Plaintiff

30800 Telegraph Rd. Ste. 1775

Bingham Farms, MI 48025

(248) 980-3641

Dated: 5/16/06

JS 44 (Rev. 11/04)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

JAMES DEVLIN

DEFENDANTSELECTRICAL WORKERS' JOINT
BOARDS OF TRUSTEES**(b) County of Residence of First Listed Plaintiff**

WAYNE

County of Residence of First Listed Defendant

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE
LAND INVOLVED.**(c) Attorney's (Firm Name, Address, and Telephone Number)**JAN JEFFREY RUBINSTEIN
30800 TELEGRAPH RD. STE. 1775
BINGHAM FARMS, MT 48025
(248) 980-3641**Attorneys (If Known)****II. BASIS OF JURISDICTION**

(Place an "X" in One Box Only)

☐ 1 U.S. Government
Plaintiff☒ Federal Question
U.S. Government Not a Party)☐ 2 U.S. Government
Defendant☐ 4 Diversity
(Indicate Citizenship of Parties in Item III)**III. CITIZENSHIP OF PRINCIPAL PARTIES**

(For Diversity Cases Only)

Citizen of

Case: 2:06-cv-12232

Citizen of

Assigned To: Cook, Julian Abele

Citizen or Foreign

Referral Judge: Pepe, Steven D

Filed: 05-16-2006 At 09:58 AM

CMP JAMES DEVLIN V. ELEC WORKERS JO
INT BD OF TRUSTEES (TAM)**IV. NATURE OF SUIT**

(Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury PERSONAL INJURY - Med. Malpractice <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input checked="" type="checkbox"/> 790 Other Labor Litigation <input checked="" type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Set TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition		

V. ORIGIN

(Place an "X" in One Box Only)

☒ Original
Proceeding☐ 2 Removed from
State Court☐ 3 Remanded from
Appellate Court☐ 4 Reinstated or
Reopened☐ 5 Transferred from
another district
(specify)☐ 6 Multidistrict
Litigation☐ 7 Appeal to District
Judge from
Magistrate
Judgment**VI. CAUSE OF ACTION**

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

29 USC 1001

Brief description of cause:

DEFENDANT FAILED TO PAY BENEFITS OWED TO PLAINTIFF

VII. REQUESTED IN COMPLAINT:☐ CHECK IF THIS IS A CLASS ACTION
UNDER F.R.C.P. 23

DEMAND \$ 57,000

CHECK YES only if demanded in complaint
JURY DEMAND: ☐ Yes ☐ No**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE

DOCKET NUMBER

DATE

5/16/06

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

PURSUANT TO LOCAL RULE 83.11

1. Is this a case that has been previously dismissed?

☐ Yes

☒ No

If yes, give the following information:

Court: _____

Case No.: _____

Judge: _____

2. Other than stated above, are there any pending or previously discontinued or dismissed companion cases in this or any other court, including state court? (Companion cases are matters in which it appears substantially similar evidence will be offered or the same or related parties are present and the cases arise out of the same transaction or occurrence.)

☐ Yes

☒ No

If yes, give the following information:

Court: _____

Case No.: _____

Judge: _____

Notes :
